

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DARRYL HUDSON,

Petitioner,

v.

R. DIAZ, Warden,

Respondent.

No. C 13-3782 JSW (PR)

**ORDER TO PAY FILING FEE;
DENYING LEAVE TO PROCEED
IN FORMA PAUPERIS;
DENYING MOTION TO STAY
PETITION WITHOUT
PREJUDICE AND**

(Docket Nos. 3, 4)


Petitioner, a prisoner of the State of California, filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the constitutionality of his state conviction. The petition contains claims that appear to have been exhausted, but Petitioner has filed a motion to stay and abey the petition so that he can exhaust additional claims in state court. The United States Supreme Court has held that district court may stay mixed habeas petitions to allow the petitioner to exhaust in state court. *Rhines v. Weber*, 544 U.S. 269, 277-78 (2005). The district court's discretion to stay a mixed petition is circumscribed by AEDPA's stated purposes of reducing delay in the execution of criminal sentences and encouraging petitioners to seek relief in the state courts before filing their claims in federal court. *Id.* at 277. A stay and abeyance is only appropriate where the district court has first determined that there was good cause for the petitioner's failure to exhaust the claims in state court and that the claims are potentially meritorious. *Id.*

Petitioner has neither identified the claims he wishes to exhaust, shown that they

1 are potentially meritorious, nor shown good cause for his failure to exhaust them prior to
2 arriving in federal court; he must do all of these things in order to obtain the stay he
3 seeks. Consequently, the motion for a stay is DENIED without prejudice. **Within 28**
4 **days of the date this order is filed** Petitioner may file another motion for a stay that
5 makes the showing required by *Rhines*.

6 IT IS SO ORDERED.

7
8 DATED: October 3, 2013


JEFFREY S. WHITE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DARRYL HUDSON,
Plaintiff,

Case Number: CV13-03782 JSW

CERTIFICATE OF SERVICE

v.


R DIAZ et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 3, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Darryl W. Hudson
AB7149
P.O. BOX 4400
Wasco, CA 93280

Dated: October 3, 2013


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk